

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Rules:)	RM 9210
Regulatory Access Charge Reform and)	
Price Cap Performance Review for)	
Local Exchange Carriers)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	
for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure)	CC Docket No. 91-213
and Pricing)	
)	
End User Common Line Charges)	CC Docket No. 95-72

BELLSOUTH REPLY COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby submit their Reply Comments in the above-captioned proceeding to respond to the various comments filed by other parties.

In its Petition for Rulemaking, CFA¹ urges the Commission to establish a rulemaking proceeding for the purpose of the immediate prescription of access charges of incumbent local exchange carriers ("ILECs") to lower "cost-based" levels. As BellSouth and other commenters

¹ The Petition for Rulemaking which is the subject of this comment proceeding was filed by Consumer Federation of America, International Communications Association and National Retail Federation, all of whom are collectively referred to herein as "CFA."

who oppose this request have stated, this petition is an untimely request for the Commission to reconsider determinations already made in its Access Reform Order.² In the alternative, as some of the commenters state, it is a premature request for the Commission to invoke the prescriptive approach which it has stated it may adopt in the event that a market-based approach to access charge reform does not have its intended results.³ The Access Reform Order was adopted less than a year ago; the bulk of the access reform rules have only just been implemented less than two months ago; and the Commission has neither established the particular rules under which the market-based approach will operate, nor has it concluded the necessary proceedings regarding the recovery of historical costs. Finally, contrary to the view of CFA and those supporting its Petition, the Commission indicated in its Access Reform Order that it did not expect that the local competition which would help drive access charge rate levels down would develop immediately but that rather it expected such competition would emerge over a period of time.⁴

The commenting parties which support the CFA Petition, most of whom are interexchange carriers, have descended upon the Commission with an onslaught of criticisms against ILECs for their various legal attacks upon the Commission's attempts to implement the Telecommunications Act of 1996 (the "1996 Act").⁵ They use these activities and their results as an apparent rationale for a prescription of access charges to forward-looking economic costs, as

² See, e.g., USTA at 2-3; US West at 2-4.

³ See, e.g., USTA at 3; US West at 4-5.

⁴ See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing and End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213 and 95-72, *First Report and Order*, 12 FCC Rcd 15982 (1997) ("Access Reform Order"), paras. 260, 268 and 269.

⁵ See, e.g., AT&T at 6 et seq.; LCI at 6 et seq.; and WorldCom at 8 et seq.

if rejoicing at the opportunity to penalize ILECs for the ILECs' legitimate attempts to assure that both the letter of the 1996 Act and the intent of Congress are followed.

These commenters conveniently fail to recognize the extraordinary efforts which ILECs such as BellSouth have undergone and the substantial sums of money and resources which have been expended in compliance with the requirements of the 1996 Act to unbundle and open their networks to competitors, both those wishing to resell local exchange services and those desiring the utilize unbundled network elements. For instance, BellSouth has in place an officer-level organization devoted to serving the needs of competitive local exchange carriers ("CLECs") which has more than 600 full-time employee equivalents and spent well over one-half billion dollars during fiscal year 1997 to directly support these CLEC customers regionwide. Indeed, because the 14-point checklist which must be met by a Bell Operating Company ("BOC") before it may engage in the provision of in-region interLATA long distance service includes the provision of such services for resale and the availability of unbundled network elements, and because a determination must be made that such entry is in the "public interest," BOCs, in particular, have a substantial interest in seeing to it that the requirements of the 1996 Act are fully met.

In any event, the Commission should not grant the CFA Petition and must not proceed to prescribe access charge rate levels as requested by CFA and its supporters. As a preliminary matter, the Commission's statutory authority for prescribing rates is limited. Section 205 permits the Commission to prescribe rates only where a determination has been made that existing rates "[are] or will be in violation" of any of the provisions of the Communications Act,⁶ i.e., it must

⁶ 47 U.S.C. Section 205.

find that the existing rates are illegal. There has been no such determination here, nor could there be, and, indeed, the Commission has found just the opposite.

The Commission has indicated that under its market-based approach, it will continue with present mechanisms to assure that rates are “just and reasonable” even while allowing ILECs greater pricing flexibility.⁷ Where such rates continue to be regulated under price cap rules, the returns achieved are presumptively reasonable.⁸ Additionally, rates which are designed to recover actual historical costs, such as are the access charges at issue here, are also consistent with the “just and reasonable” requirement imposed under Section 201 of the Communications Act.⁹ The Commission has determined that it will establish a proceeding to determine how recovery of such historical costs should be handled,¹⁰ and until it does it may not deny ILECs the ability to continue their recovery through the access charge regime. In contrast, the forward-looking incremental cost approach which some commenters suggest would preclude ILECs from having the opportunity of recovering costs which historically have been assigned to the interstate jurisdiction through separations and from recovering costs of their existing, embedded networks and technologies. Were the Commission to take actions which deny BellSouth and other ILECs an opportunity to recover their actual costs, such actions would be tantamount to an unconstitutional taking of property without just compensation.

⁷ Access Reform Order, para. 264.

⁸ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786, 6836 (1990) (the “LEC Price Cap Order”).

⁹ 47 U.S.C. Section 201. See generally FPC v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944) (rates that recover historical costs are “just and reasonable”).

¹⁰ Access Reform Order, para 14.

A prescriptive approach would also contravene the deregulatory intent underlying the 1996 Act. It is undeniable that the intent of the framers of the Act was to foster a deregulatory approach to telecommunications. As the Statement of Purpose indicates, the intent of the legislation was to “promote competition and reduce regulation,” and other statements confirm this fact.¹¹ The approach which CFA and its commenters advocate is, in contrast, the most heavy-handed, intrusive and micro-managing kind of regulation that there can be. This is in stark contrast to the course chosen by the Commission. The Commission not only found that the market-based approach which it chose best reflects Congressional intent, but also is the superior method for regulating access charges with substantial consumer benefits.¹² None of the commenters has shown the case to be otherwise.

Indeed, the Commission’s use of price regulation has had substantial benefits. The Commission has required price cap LECs to lower their price caps based upon productivity offsets which are much greater than the economy as a whole (and even much greater than AT&T, when under price cap regulation, was held to), including substantial, continuous decreases in overall access charges over time. As USTA states, price cap LECs have reduced access charges by \$11 billion since 1991.¹³ Access charges will be reduced substantially again in 1998, 1999 and 2000. To the extent that end user customers have not benefited from these access charge rate

¹¹ The Senate Conference Report stated that the legislation is “pro-competitive” and “deregulatory.” S. Conf. Rep. No. 104-230 at 113 (1996). Rep. Oxley stated “The bill is antiregulatory and antibureaucratic in philosophy.” 142 Cong. Rec. H1145, H1161 (Feb. 1, 1996); Sen. Kerry stated, “Competition, and the innovation that results from healthy market forces, will be the centerpiece of our telecommunications policy.” 142 Cong. Rec. S687, S 698 (Feb. 1, 1996).

¹² Access Reform Order, para. 258 et seq.

¹³ USTA at 5.

reductions, it is not because of the ILECs. Instead, it is because interexchange carriers have failed to pass along the reductions. As two of the commenters indicate, interexchange carriers have not historically passed along access charge reductions, although they do pass along access charge increases.¹⁴ Additionally, as USTA recently observed, although its members (which include BellSouth) recently made substantial reductions in per minute access charges in the amount of \$3 billion as a part of access reform, interexchange carriers have not lowered their rates to their end users customers to pass along these savings.¹⁵

The commenters supporting CFA are ignoring another essential fact in contending that the existing access charge system and its existing rate levels are somehow anti-competitive. Contrary to their view, there is substantial access competition and there has been since even prior to the 1996 Act.¹⁶ Competitive developments such as these have had a beneficial impact upon end user customers and interexchange carriers alike. They have spurred BellSouth to develop new and innovative service offerings designed to meet the expanding needs of customers, and they have provided such customers with legitimate and useful choices. As for commenters' concerns regarding a potential "price squeeze" by ILECs entering the in-region long distance

¹⁴ American Petroleum Institute at 12-13; Telecommunications Resellers Association at 7-8.

¹⁵ PR Newswire, February 13, 1998, "USTA Estimates Long Distance Companies Are Gouging Consumers By \$2 Billion."

¹⁶ In the late 1980's competitive access providers ("CAPs") began the deployment of fiber-optic networks in BellSouth's large urban markets such as Atlanta and Miami. Throughout the 1990's, CAPs have continued to expand their investment in BellSouth's nine-state region. As of year-end 1997, approximately 120 CAP networks were in-service in the BellSouth region serving more than thirty-five different markets, and almost forty additional competitive facility-based networks are currently under development regionwide. See also, Richard Schmalensee and William Taylor, National Economic Research Associates, "The Need For Carrier Access Pricing Flexibility In Light Of Recent Marketplace Developments, A Primer," attached to USTA's Comments.

market,¹⁷ none of the commenters expressing this concern has shown that the regulatory safeguards imposed in the Commission's In-Region Interexchange Order¹⁸ would provide inadequate protection, nor is there any reason to believe such safeguards would not be sufficient.

As for local competition, the commenters appear to be trying to convince the Commission that the 1996 Act is not working. The ILECs demonstrate in their comments, however, that there is growing competition in the local service arena.¹⁹ These inroads appear to be being made primarily by smaller competitors²⁰ - a fact calling into question the statements of larger interexchange carriers decrying their inability to compete. Thus, the inevitable question arises whether interexchange carriers' reluctance to enter full-fledged into the local marketplace has the intent to forestall the entry by ILECs into their in-region long distance markets.

In sum, the Commission should not be persuaded by CFA and its supporters to initiate the requested rulemaking proceeding to prescribe access charges to lower levels. Insofar as access charges are concerned, the Commission should focus its attention on the immediate and pressing need for the pricing and regulatory flexibility that are essential to implementing the market-based approach and for the appropriate handling of historical costs presently recovered through

¹⁷ Excel Telecommunications at 9-10, AT&T at 18 and MCI at 8-9.

¹⁸ In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplaces, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61* (FCC 97-142), 12 FCC Rcd 15756 (1997).

¹⁹ See, e.g., Ameritech at 4 et seq.; USTA at 7 et seq.

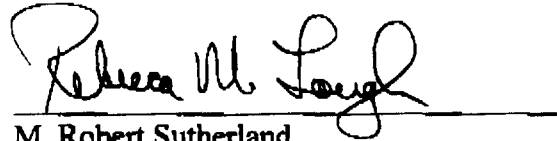
²⁰ For instance, within BellSouth's nine-state region, AT&T offers local exchange service only in Georgia, while Sprint serves local customers only in the Orlando, Florida market. Indeed, of the more than 270,000 access lines currently provided by CLECs in BellSouth's region, only 10% are provided by the three largest interexchange carriers.

interstate access charges. The Commission must also establish explicit support mechanisms for universal service support in order to remove the support currently implicit in interstate access charges.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By:

A handwritten signature in cursive script, appearing to read "Rebecca M. Lough", is written over a horizontal line.

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Date: February 17, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of February 1998 served the following parties to this action with a copy of the foregoing BELLSOUTH REPLY COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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